

South Carolina Overview

Triennial Review >>



Presentation Summary

I. LEGAL CONSIDERATIONS (Patrick Turner)

- A. What the FCC is asking the Commission to do and how it differs from what the Commission has been asked to do in the past.
- B. The standards set forth in the Federal Telecommunications Act of 1996 that govern what the Commission is being asked to do.
- C. How it came about that the Commission is being asked to do this now.
- D. And what is the status of this Order as of today

II. PRACTICAL CONSIDERATIONS (Cindy Cox)

- A. What the FCC has already decided is and is not a UNE.
- B. What guidance the FCC has provided for determining whether switching, transport, and high capacity loops will be UNEs in South Carolina.
- C. The type of information the Commission may want to gather to assist it in making these determinations.
- D. Timeframes related to these determinations.

III. POSSIBLE WAYS TO GATHER INFORMATION THAT WILL ASSIST THE COMMISSION IN MAKING THESE DETERMINATIONS (Patrick Turner)



Introduction

- Today we will provide some background and a high level overview of the FCC's Triennial Review Order
 - This will not include the specifics of our case
- The Order is approximately 500 pages long. It has 840 paragraphs and 2447 footnotes.
 - Plus an Errata has just been released modifying or correcting several issues.
 - Thus we are still analyzing the order and its impact.
- The Commission has different responsibilities under this Order than it has had under prior FCC Orders.
 - Under prior FCC Orders, this Commission's duties focused on TELRIC-based pricing of what the FCC already had determined to be UNEs.
 - Under this Order, this Commission's duties focus on whether mass-market switching, transport, and high-capacity loops will be UNEs in South Carolina.



Standards for Determining UNEs

- The 1996 Act seeks to transform local telecommunications from a market characterized by exclusive franchises to one in which “meaningful facilities-based competition” flourishes. S. Conf. Rep. No. 104-230, at 148 (1996).
- The 1996 Act allows CLECs to obtain “[s]ome facilities and capabilities” from the ILEC as UNEs. Id.; see also 47 U.S.C. §251(c)(3).
- In deciding whether a given piece of an ILEC’s network is a UNE, “the [FCC] shall consider, at a minimum, whether... the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer.” 47 U.S.C. §251(a)(2)(8)

>> What has brought us to this point?

- In August 1996, the FCC issued its First Report and Order, establishing its rules for UNEs. Basically the FCC said that everything was a UNE
- The United States Supreme Court invalidated those rules and the matter went back to the FCC.
- The FCC decided the UNE question for a second time, in a decision that purported to follow the Supreme Court's guidance, but that still opened the door for a very broad definition of UNEs,
- That FCC decision was appealed to the Court of Appeals for the District of Columbia, and the FCC decision was reversed and remanded again, as being overly broad.
- So what we have now is the FCC's third attempt to create rules that can be used to define what constitutes a UNE.



Where is the case right now?

- The Triennial Review Order is scheduled to be effective on October 2, 2003
- BellSouth and the other RBOCs have filed a Writ of Mandamus with the D.C. Court of Appeals. Basically we are arguing that the FCC did not do what the Court instructed it to do and we are asking the Court to direct the FCC to obey the Court's order. The Court has called for the parties to brief the issue by October 2, the effective date of the Order.
- Appeals have been filed in every circuit in the country, but one. (There are 12 of them.) The cases have all been consolidated in the 8th Circuit, which was chosen from among the 11 circuits by a lottery.
- Applications for stays of the FCC's Order have been filed with both the FCC and the courts.
- The RBOCs have asked the 8th Circuit to transfer the case back to the DC Court of Appeals where the RBOC Mandamus petition is pending. The FCC has now asked that the mandamus petition be transferred to the 8th Circuit.



What does this mean?

- If the Writ of Mandamus is granted, or a stay is granted, what happens?
 - It will be as if the FCC had not issued its order as to Transport, Loops, EELs and Switching, which are the issues the RBOCs have raised.
- If the Writ of Mandamus is denied and no stay is granted, what happens then?
 - The FCC order becomes effective, and BellSouth will conform to it until such time that a court overturns the order. BellSouth will continue to provide UNEs except those where state commissions rule that CLECs aren't "impaired" without access.



What does this Commission have to do if the order becomes effective?

- Basically the Triennial Review Order is an attempt by the FCC to delegate some of its authority to the States. That is, instead of the FCC deciding what is and is not a UNE, based on an “impairment” standard, for the most part they have decided to pass that decision to the states, at least with regard to switching, transport and certain loops. The FCC has created two opportunities for state hearings.
 - The first opportunity is what we call the 90 day hearing. The FCC concluded that there is no “impairment” with regard to “enterprise” switching. The FCC allowed 90 days for someone to challenge this conclusion in the states. The initial take on this is that no one intends to challenge this finding, so we don’t expect to have any of the 90-day hearings.
 - The second opportunity is what we call the 9 month proceeding. In this proceeding, the FCC has created a presumption that CLECs are impaired with regard to switching, transport and high capacity loops, but has allowed challenges to those presumptions for switching, transport and loops as UNEs.

>> Basic FCC Framework for Impairment

- FCC Found No Impairment:
 - Enterprise switching
 - OCn (fiber) loops and transport **
 - Fiber to the home (FTTH) **
 - Fiber sub-loop feeder **
 - “Greenfield” fiber build **
 - Line Sharing **
 - Packet Switching **

** Broadband Related

>> Basic FCC Framework for Impairment(cont.)

- FCC Found Impairment:
 - Copper loops, sub-loops
 - Narrowband path of Hybrid loop and “overbuild” fiber loop
 - Line Splitting
 - Shared transport, call-related DBs, and signaling required only in association with ILEC-provided UNE switching
- FCC Found Impairment but Triggers for Non-Impairment Established:
 - Mass Market Switching
 - Transport
 - High Capacity Loops



What will BellSouth be doing in the 9-month hearings?

- BellSouth's objective will be to demonstrate that the triggers established by the FCC regarding non-impairment for mass market switching, transport and high capacity loops have been met in as many markets (switching) and on as many routes (loops and transport) as we can. Thus CLECs will not be impaired without access to these UNEs.



Major open definitional issues requiring State Decision:

- What is the appropriate definition of a “market?” The FCC has said in its order that a market can’t be as large as a state nor should it be too narrowly defined. (§495) Options include LATAs, MSAs and UNE Zones, as well as perhaps other definitions that no one has thought of yet.
- What is the proper definition of “mass market” customers versus “enterprise” customers? The FCC has determined that CLECs are not impaired when it comes to providing switching for “enterprise” customers, but they are presumed to be impaired when it comes to providing switching for “mass market” customers.

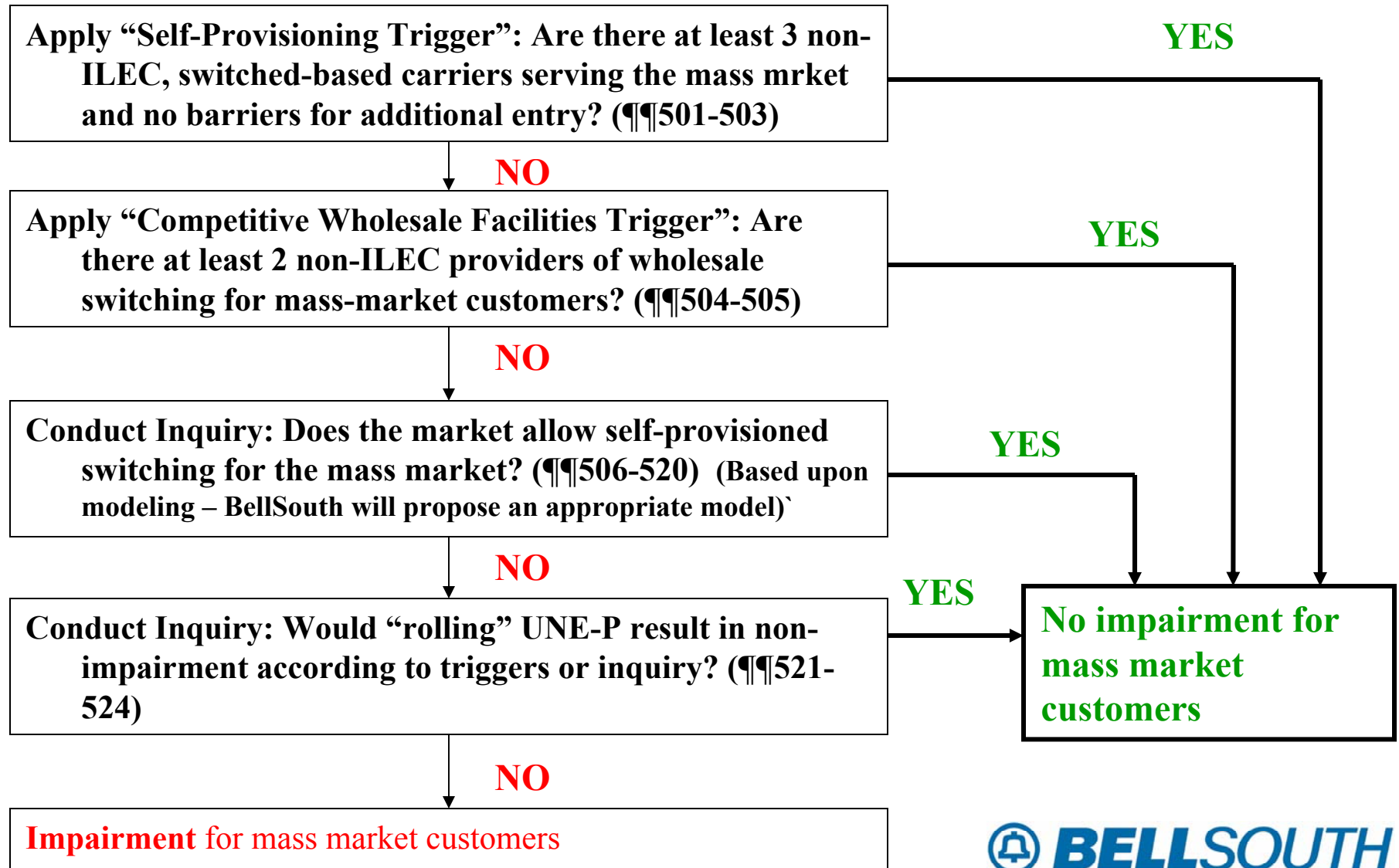


What will BellSouth have to show with regard to switching?

- The FCC has offered several alternatives. First there are two “triggers” that can be used to show that CLECs are not impaired in any given “market” without access to “mass market” switching.
 1. If there are three CLECs in a given market that are operationally ready and willing to provide services to mass market customers using their own switches, CLECs are not impaired in that market without access to ILEC unbundled switching.
 2. If there are two wholesale switching providers not affiliated with the ILEC in a given market that are offering switching to CLECs, CLECs are not Impaired without access to the ILEC’s switches for mass market customers.
- If neither “trigger is met, the ILEC can use “modeling” to demonstrate that CLECs could self-provision switching for the mass market customers in that market on an economic basis.



Process to determine Switching Impairment





Impairment Analysis - Modeling

- ...We find that the technical shortcomings in each of these studies preclude us from relying on their results to evaluate impairment at the national level. These shortcomings include: **(1) failure to use the proper framework when determining impairment; (2) insufficient granularity in their analyses; (3) failure to consider the typical revenue gained from serving the average customer in the market; (4) inadequate support for the parameters they employed.** §472
- ...All of these studies...strongly support the need for a **more granular analysis of impairment**. We have insufficient evidence in the record, however, to conduct this granular analysis. Such an analysis would require complete information about **UNE rates, retail rates, other revenue opportunities, wire center sizes, equipment costs, and other overhead and marketing costs**...That market specific data is needed is indicated by the significant variation in the costs and revenues an efficient entrant is likely to face §485
- Specifically state commissions must determine whether entry is likely to be economic utilizing the most efficient network architecture available to an entrant...**The analysis must be based on the most efficient business model for entry rather than any particular carrier's business model.** ¶517

>> Impairment Analysis – Modeling (cont.)

- ...to evaluate the feasibility of self-deploying a switch, states should perform a business case analysis of providing local exchange service...**cost factors listed should not be considered in isolation, but only in the context of a broad business case analysis that examines all likely potential costs and revenues.** n. 1581
- ...In determining the likely revenues available to a competing carrier in a given market, the state commission must **consider all revenues** that will derive from service to the mass market, based on the most efficient business model for entry. These potential revenues include those associated with providing **voice services**, including (but not restricted to) the basic retail price charged to the customer, the sale of **vertical features**, **universal service payments**, **access charges**, **subscriber line charges**, and, if any, **toll revenues**. The state must also consider the revenues a competitor is likely to obtain from using its facilities for providing **data and long distance services** and from **serving business customers**. ¶519



THE BELL SOUTH MODEL IS BETTER POSITIONED THAN COMPETING MODELS TO FULFILL THE ORDER'S DEMANDS

BellSouth Model

Granular



Wirecenter level analysis, with granular costs and revenues

Well-supported parameters



BellSouth model will be well documented

Assumes efficient business model



Assumes efficiency, e.g., in areas such as SG&A (Sales, General & Administrative costs)

Assumes efficient network architecture



Assumes efficiency, e.g., in areas such as DSLAM deployment

Provides a business case analysis



True business case" analysis, e.g., based on entity cashflows

Incorporates all likely revenues and costs



Able to model multiple voice and data products for business and residential



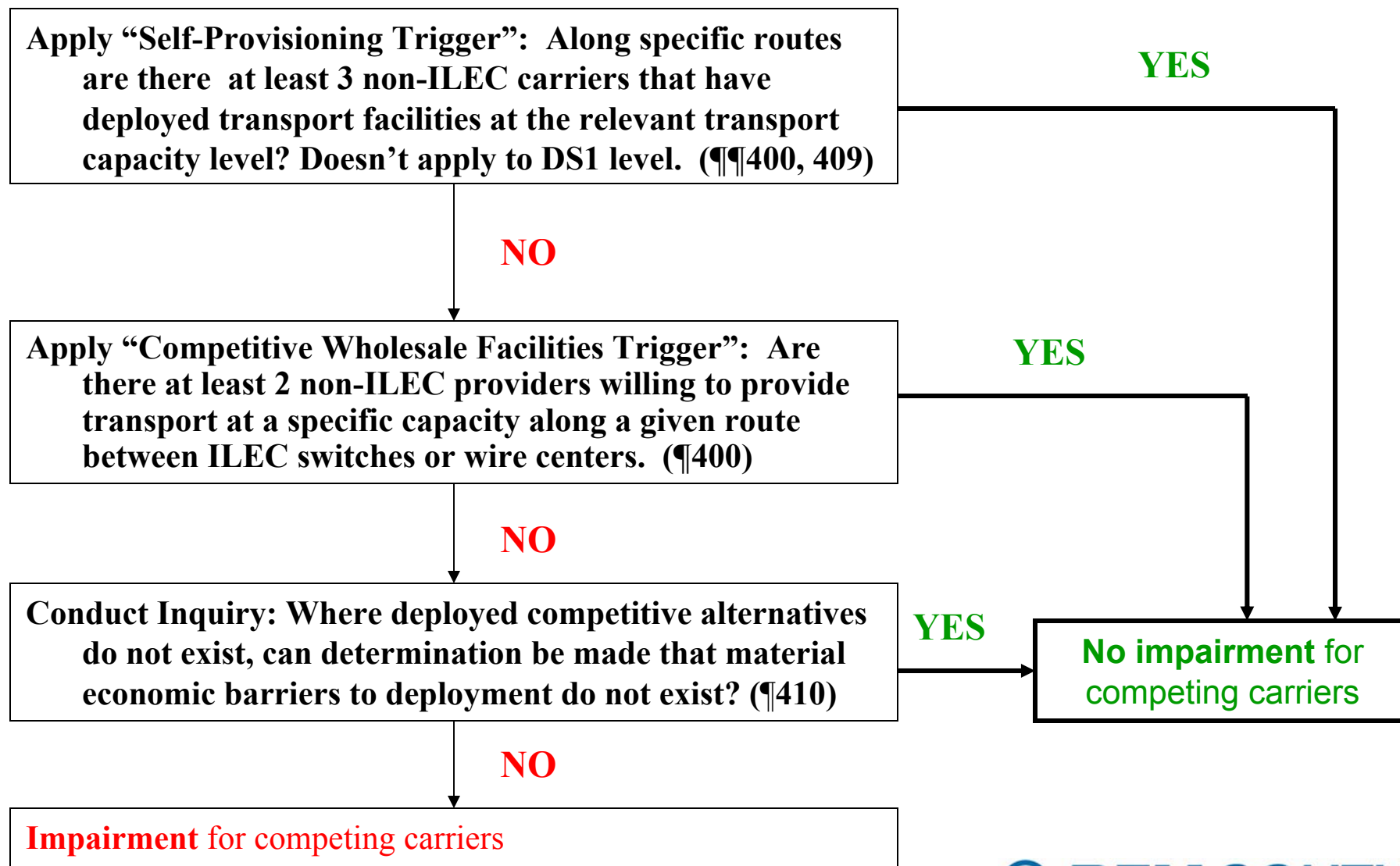
Batch Hot Cut Process

- In addition to demonstrating that switching is available to CLECs in a given market, the ILEC will also have to demonstrate that it has a “batch hot cut” process in place that will enable CLECs to move customers from UNE-Ps to the CLECs’ switches.
- When addressing the “batch hot cut” process, the state commissions also have to look at the price charged for the batch hot cuts, and determine that the prices for batch hot cuts reflect any efficiencies that may be realized in doing hot cuts in batches.

>> What will BellSouth have to show with regard to transport?

- First, what we are talking about is dedicated transport, which is currently a UNE. The Order provides that the treatment of shared transport will follow the states' decisions on switching for the mass market customers. If we have to provide switching we will have to provide shared transport.
- For dedicated transport, the FCC established two triggers to be applied on a route by route basis, which if met will relieve us of providing unbundled transport on that route.
 1. If there are three retail providers of transport on a particular route, CLECs are not impaired if they do not have access to the ILEC's dedicated transport on an unbundled basis for that route.
 2. If there are two wholesale providers willing to offer transport to other CLECs on the route, the CLECs are not impaired by not having access to the ILEC's unbundled transport on the route.

>> Process to determine Transport Impairment In a Market



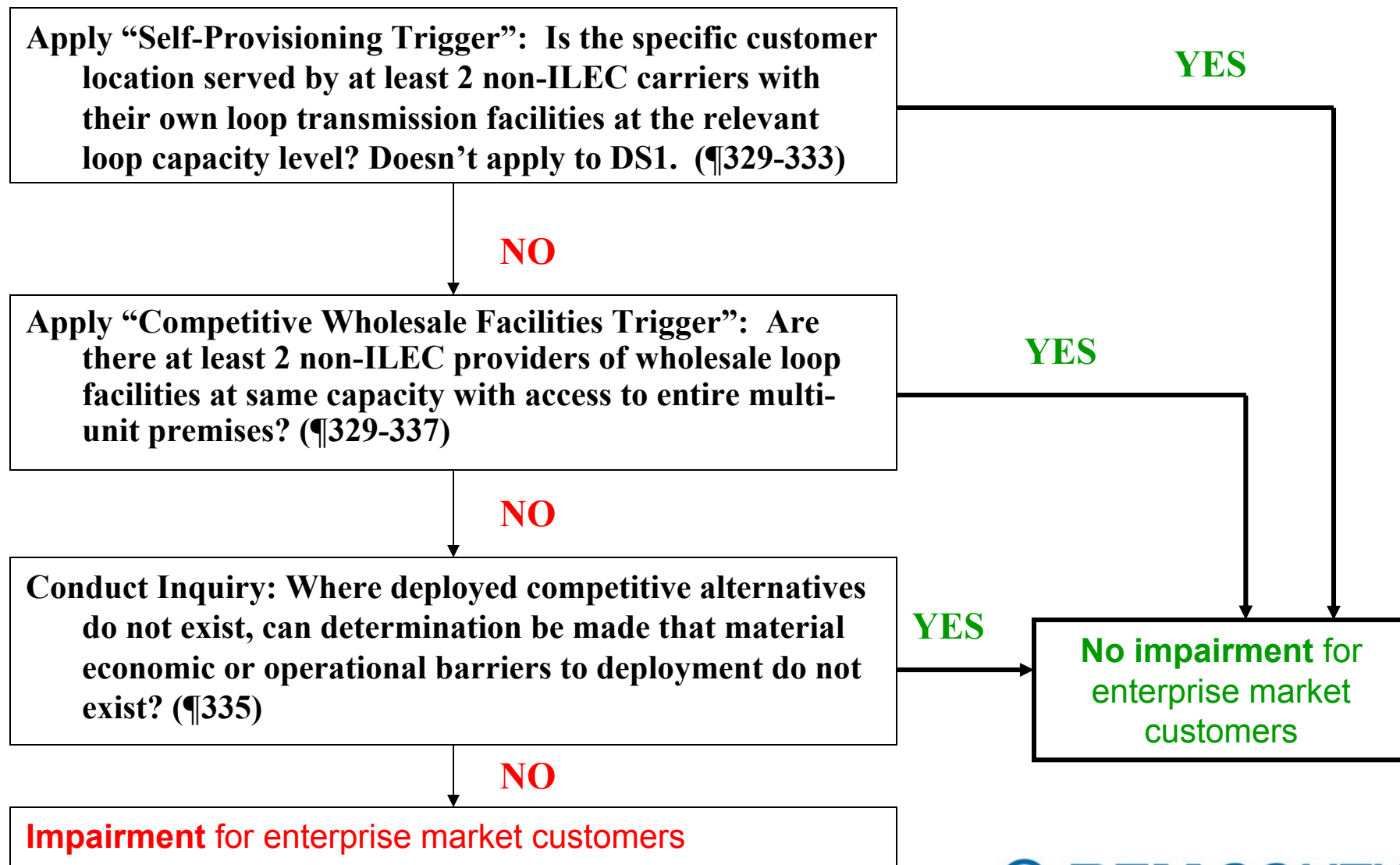


What does BellSouth have to show with regard to high capacity loops in order to be relieved of any obligation to provide them as UNEs?

- First, the FCC found, on a national basis, that there was no impairment with regard to OCn loops, FTTH loops, sub-loop feeder, and greenfield fiber construction
- With regard to other situations, if there are two CLECs self-provisioning high-capacity loops to a particular location, other CLECs are not impaired without access to the ILEC's unbundled high-capacity loops.
- Finally there is a wholesale trigger that is met when there are two wholesale providers of high-capacity loops to a particular multi-tenant location.
- Since these are high-capacity loops, these involve enterprise customers, and has to be analyzed on a location by location basis and each capacity level is looked at separately.



Process to determine Enterprise Loop Impairment In a Market





Gathering Data

- BellSouth & CompSouth in discovery discussions
- Data from non-parties, such as:
 - Power Companies
 - Cable Companies
 - Wireless Providers
 - CLECs
 - Alternate Access Providers
 - Municipalities
 - Others
- Switching analysis focuses on markets
- Transport and Loop analysis focuses on routes
- Likely to require protective orders and subpoenas

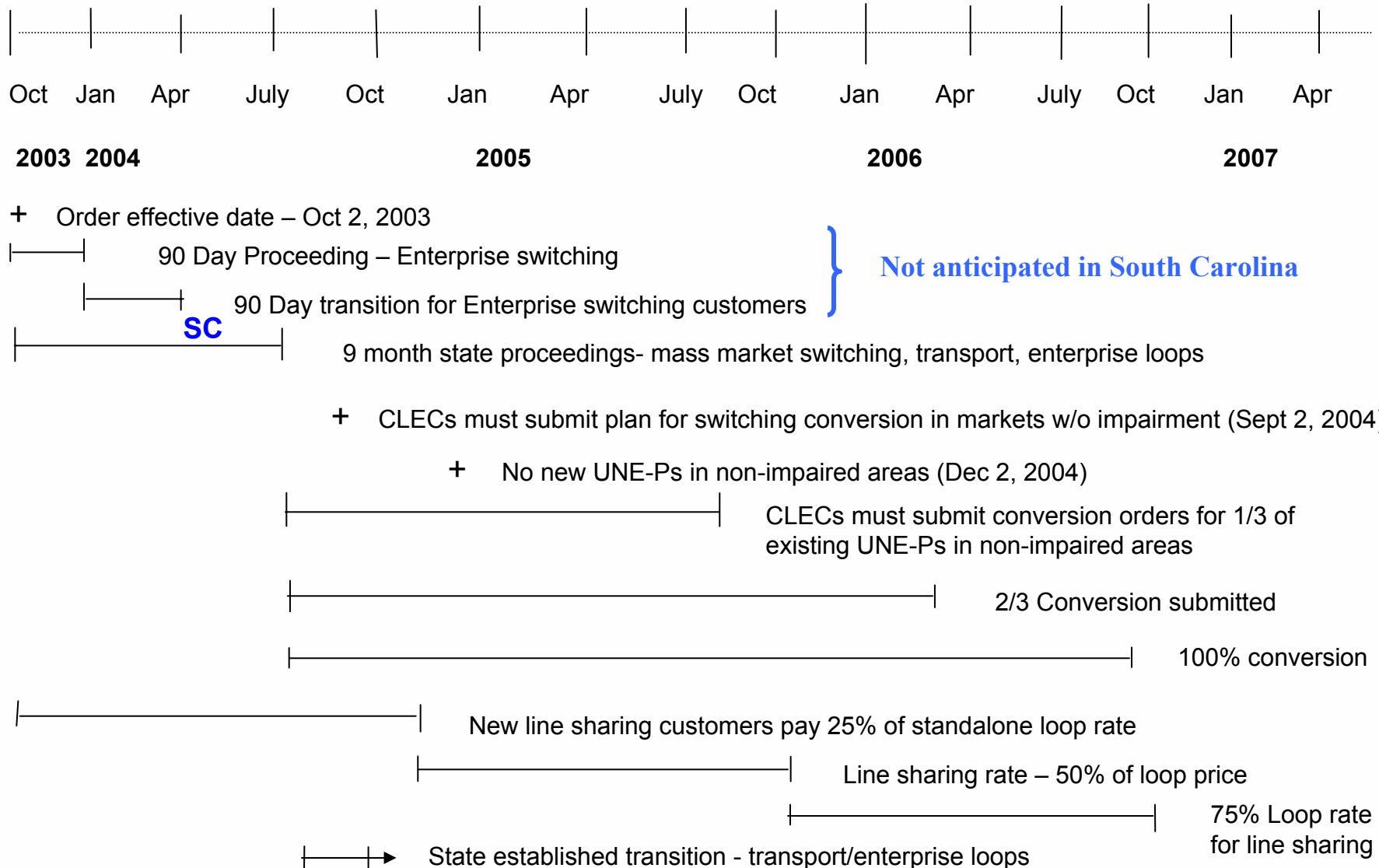


Proposed Schedule

- Hearing & Decision within 9 months of effective date of FCC order – to determine UNE Impairment
- Industry Proposed SC Schedule (approximate):
 - Triennial Review Order Effective date 10/02/03
 - Direct Testimony Filed (1st docket) – all parties 01/29/04
 - Rebuttal (1st docket)
Direct Testimony (2nd docket) - all parties 03/12/04
 - Surrebuttal Testimony (1st docket)
Rebuttal (2nd docket) - all parties 03/31/04
 - Hearing (M-F) 04/12/04
 - Deadline for State Decisions 9 months from effective date



Timeline of Key Regulatory Events





COMMISSION DATA GATHERING

The Commission has the power and the duty to gather relevant information regarding the local telecommunications market and companies competing in that market

- The Commission may "investigate and examine the condition and operation of telephone utilities or any particular telephone utility," and it may do so "either with or without a hearing as it may deem best." S.C. Code Ann. §58-9-780.
- "The Commission must compile information in order to monitor the status of local telephone competition in this State." In doing so, it "must require all local exchange carriers, as defined in Section 58-9-10(12), to report to the commission annually, the total number of access lines providing local exchange telecommunications services to an end user in this State." S.C. Code Ann. §58-9-280(G)(3) (2003 South Carolina Laws Act 6 (H.B. 3344)).



COMMISSION DATA GATHERING

Potential Mechanisms for Gathering Data

- The Commission may require telephone utilities to file special reports under oath. S.C. Code Ann. §58-9-370.
- The Commission may order the production of a telephone utility's "books, accounts, papers, or records" relating to its "business or affairs within the State" S.C. Code Ann. §58-9-1070.
- The Commission may "inspect the property, plant and facilities of any telephone utility and inspect or audit . . . the accounts, books, papers and documents of any telephone utility." S.C. Code Ann. §58-9-790.
- The Commission may inspect any information that any other department, commission, board or agency of the State government has regarding a telephone utility. S.C. Code Ann. §58-9-800.
- The Commission "may issue subpoenas, subpoenas duces tecum and all other necessary processes in proceedings pending before it" S.C. Code Ann. §58-9-1040.
- The Commission may depose witnesses. S.C. Code Ann. §58-9-1060.